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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 MICHAEL JOSEPH BRADY,

7 Petitioner,

8 v.

9 MAGGIE MILLER-STOUT,

10 Respondent.

NO. C11-6020 RJB/KLS

ORDER GRANTING  
PETITIONER'S MOTION TO STAY  
AND DENYING DEFENDANT'S  
MOTION TO DISMISS

11 Before the Court is Petitioner's Motion to Stay. ECF No. 9. Petitioner Michael Joseph  
12 Brady requests a stay of his federal habeas petition pending resolution of three state court  
13 petitions attacking his state court convictions. Respondent opposes the stay and moves in the  
14 alternative, for dismissal of the habeas petition without prejudice to re-filing after the state  
15 court proceedings have been resolved. ECF No. 10. Respondent does not address the merits  
16 of Petitioner's habeas claims and seeks to reserve her right to move to dismiss the petition as  
17 untimely if the petition is filed at a later time. ECF No. 13, p. 4.

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19 Based on the information originally provided, the Court directed the parties to provide  
20 further information relating to the status of Mr. Brady's personal restraint petitions (as he has  
21 filed numerous petitions but only some challenge his state court convictions), and regarding  
22 Petitioner's deadline to file his federal habeas petition. ECF No. 12. The parties submitted  
23 additional briefing on their motions. ECF Nos. 13 and 14. Having reviewed the submissions  
24 and being fully advised, the Court finds that this matter should be stayed pending resolution of  
25 Mr. Brady's state court proceedings.  
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## BACKGROUND

Mr. Brady is currently litigating the following personal restraint petitions (PRP) in the Washington Supreme Court that challenge his state court convictions:

- (1) Case No. 86589-2 – Briefing complete; awaiting decision
- (2) Case No. 86640-6 – Briefing complete; awaiting decision
- (3) Case No. 86856-5 – Response to PRP due April 9, 2012; Petitioner’s reply is due May 14, 2012; decision to follow

Mr. Brady was found guilty following a bench trial in Pierce County Superior Court on 17 counts of first degree child rape, 7 counts of first degree child molestation, and 6 counts of sexual exploitation of a minor with sexual motivation. *See State v. Brady*, 2004 WL 958070 (Wash.App. Div. 2, May 4, 2004) (unpublished opinion). According to Mr. Brady, after the Washington Supreme Court granted his personal restraint petition on September 9, 2010, he was re-sentenced on December 30, 2010. At that time, the trial court vacated six of his convictions for exploitation of a minor, deleted the special verdict finding pertaining to those counts, and reduced his sentence accordingly. Mr. Brady believes he then had one year after re-sentencing, until December 29, 2011, to either collaterally attack his judgment and sentence in state court or file a habeas corpus petition in federal court. ECF No. 14, at 5. He has filed five personal restraint petitions challenging his state court convictions since 2009. He filed his federal habeas corpus petition on December 9, 2011. ECF No. 1, at 34.

## DISCUSSION

The Court may stay a petition where the stay would be a proper exercise of discretion. *Rhines v. Weber*, 125 S. Ct. 1528, 1534 (2005); *see also Fetterly v. Paskett*, 997 F.2d 1295 (9th

1 Cir. 1993); *Calderon v. United States Dist. Court (Thomas)*, 144 F.3d 618, 620 (9th Cir. 1998);  
2 *Anthony v. Cambra*, 236 F.3d 568 (9th Cir. 2000).

3 The Court agrees that a stay of this federal habeas proceeding is the appropriate course  
4 of action and that neither party shall be prejudiced by such a stay. After the state courts have  
5 completely adjudicated Mr. Brady's state court proceedings, Respondent will be able to obtain  
6 all the state court files pertinent to Mr. Brady's federal habeas claims and may fully address  
7 issues pertaining to exhaustion, the statute of limitations, and the merits of his claims.

8 The stay shall remain in place until such time as Mr. Brady notifies this Court and the  
9 Respondent in writing that the pending state court proceedings are completed. When Mr.  
10 Brady receives the certificate of finality from the Washington Court of Appeals as to each of  
11 his state court petitions, he should send a copy of the certificate to this Court and to  
12 Respondent. While awaiting final resolution of his state court proceedings, Mr. Brady shall  
13 provide the Court with a short written report of the status of his pending state court petitions  
14 every sixty (60) days. After all the pending state court proceedings are completed, the Court  
15 will lift the stay and will allow Respondent forty-five (45) days to file her answer to Mr.  
16 Brady's habeas petition from the date of the Court's Order dissolving the stay.

17 Accordingly, it is **ORDERED**:

18 (1) Petitioner's motion for a stay (ECF No. 9) is **GRANTED** and this matter is  
19 **STAYED** pending resolution of the state court proceedings.

20 (2) Respondent's motion to dismiss without prejudice (ECF No. 10) is **DENIED**.

21 (3) Petitioner shall advise the Court within **thirty (30)** days of receiving a final  
22 State court ruling on each of his pending state court petitions. Petitioner shall send a copy of  
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1 the certificate of finality received from the Washington Court of Appeals as to each of his state  
2 court petitions to this Court and to Respondent. Petitioner shall also provide the Court with a  
3 short written report of the status of his pending state court petition every sixty (60) days.  
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5 (4) The Clerk shall send copies of this Order to Petitioner and counsel for  
6 Respondent.

7 **DATED** this 29th of March, 2012.

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10 Karen L. Strombom  
11 United States Magistrate Judge  
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